IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	
	)	No. 62706-6-I
Respondent,	)	(consolidated with No. 63904-8-I)
	)	
v.	)	DIVISION ONE
	)	
BRANDON RASHAD SULLIVAN,	)	UNPUBLISHED OPINION
	)	
Appellant.	)	FILED: June 14, 2010
	)	

Appelwick, J. — Sullivan appeals his conviction for possession of cocaine with intent to deliver, arguing his arrest was not supported by probable cause and that there was insufficient evidence of his intent to deliver. The officer, who had expertise in narcotics investigation, had probable cause to arrest Sullivan after witnessing his participation in three transactions. The State met its burden to show Sullivan's intent to deliver, based on the hand-to-hand transactions, the cash found on Sullivan's person, his possession of 15 to 20 rocks of cocaine, and his presence in an area know for narcotics activity. We affirm his conviction.

Sullivan also appeals his sentence enhancement based on his presence in a school zone. The State concedes it presented insufficient evidence to support the enhancement. We vacate the enhancement and remand for correction of the judgment and sentence.

FACTS

On August 16, 2007, at approximately 4:10 p.m., Officer Donald Johnson was on duty at the King County Courthouse.[1] He was stationed inside the

[1] The facts recited herein are those from the unchallenged findings of the CrR

courthouse, monitoring the streets nearby with a multi-camera surveillance system. He observed Brandon Sullivan and two other men walking northbound on Third Avenue in front of the courthouse. The other men were named Dontaye Savare and Francis Gathauri. Sullivan appeared to Officer Johnson to be holding small objects in his hand, which the officer suspected were drugs. A woman unknown to the officer approached Sullivan, who gave her a hug. The woman gave money to Sullivan with her left hand while receiving an unknown object from Sullivan in her right hand. During this transaction, Sullivan looked up over the female's shoulder. Gathauri stood in front of the defendant and the woman.

Another woman approached Sullivan shortly thereafter, and Officer Johnson recognized her as Jacqlyn Jackson, a known drug user. Jackson spoke to Sullivan, positioned another unknown man in front of Sullivan and Savare, and Savare gave an unknown object to Jackson. Savare then received money from the unknown male. This interaction lasted approximately 30 seconds.

Finally, a third woman approached Sullivan, who the officer recognized as Angelina Cotter. Officer Johnson knew her to be a drug user. Sullivan, Cotter, Gathauri and Savare crossed the street, and Sullivan entered a market. Officer Johnson then witnessed an exchange between Savare and Cotter. Sullivan came out of the market and, with Savare, entered a barber shop nearby. By this

3.6 hearing. Where our analysis requires us to look to testimony and facts as proven at trial, we have done so.

time, Officer Johnson had called an arrest team. In a search incident to arrest, police found crack cocaine and $349 in paper currency on Sullivan's person.

Sullivan was charged with possession of a controlled substance (cocaine) with intent to deliver. The State also accused Sullivan of being within 1,000 feet of a school bus route stop at the time of the crime. Following the CrR 3.6 hearing to suppress physical and oral evidence, the trial court determined probable cause existed for Sullivan's arrest and admitted the cocaine found during the search incident to arrest.

After trial, the jury found Sullivan guilty as charged and found that he delivered a controlled substance to a person within a school zone. The trial court imposed 30 months for the possession crime and 24 months for the mandatory school zone enhancement, resulting in an overall sentence of 54 months.

Sullivan timely appealed.

DISCUSSION

I. Probable Cause

Sullivan contends the trial court erred in denying his motion to suppress, arguing that police lacked probable cause to arrest him for possession of a controlled substance.[2] We review findings of fact on a motion to suppress under

[2] Sullivan also argues the trial court erred in placing the burden on him to show the arrest was not supported by probable cause. In the midst of the court's oral ruling on the CrR 3.6 hearing, the court noted the State relied almost entirely on what Officer Johnson observed on the video. The court then stated, "[T]he defense has not met its burden as to challenge the legal basis to admit it in this particular case into evidence." Even though the court's comment does not mesh with Sullivan's reliance on the video to argue its contents could not support a

the substantial evidence standard. State v. Hill, 123 Wn.2d 641, 647, 870 P.2d 313 (1994). Substantial evidence is evidence sufficient to persuade a fair-minded, rational person of the truth of the finding. Id. at 644. Where, as here, an appellant does not challenge a court's factual findings on the suppression motion, they become verities on appeal. State v. Acrey, 148 Wn.2d 738, 745, 64 P.3d 594 (2003). We review conclusions of law in an order pertaining to suppression of evidence de novo. State v. Johnson, 128 Wn.2d 431, 443, 909 P.2d 293 (1996).

Probable cause is the objective standard by which to measure the reasonableness of an arrest. State v. Graham, 130 Wn.2d 711, 724, 927 P.2d 227 (1996). Probable cause exists where the facts and circumstances within the arresting officer's knowledge and of which the officer has reasonably trustworthy information are sufficient to warrant a person of reasonable caution in a belief that an offense has been committed. Id. The court must consider the totality of the facts and circumstances within the officer's knowledge at the time of the arrest. Id. In this determination, an officer's particular training and expertise can be significant. See State v. Cole, 128 Wn.2d 262, 289, 906 P.2d 925 (1995).

While presence in a high crime area by itself is certainly not sufficient to form probable cause, it is a relevant consideration in determining whether probable cause exists. State v. Larson, 93 Wn.2d 638, 644–45, 611 P.2d 771 (1980). Officer Johnson had personal knowledge the area he was monitoring

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finding of probable cause, it is clear the court's comment had to do with the admissibility of the video, and not Sullivan's burden at the CrR 3.6 hearing.

was known for narcotics activity.

In determining whether probable cause exists, we also consider an officer's particular training and expertise. See Cole, 128 Wn.2d at 289. Officer Johnson, who had 20 years of experience as a law enforcement agent, had specific and extensive experience investigating narcotics activity, and had investigated hundreds of drug cases. He also had received specialized training pertaining to the investigation of illegal drug activity.

Finally, Sullivan contends Officer Johnson could not have had probable cause, because he did not actually see what Sullivan held in his hand. Sullivan contends his case is similar to State v. Poirier, 34 Wn. App. 839, 842–43, 664 P.2d 7 (1983), where the court held the arrest was unsupported by probable cause. There, the officers observed Poirier in a parking lot where he and another man exchanged items that appeared to be white envelopes or packages. Id. The court then listed the factors that could have supported probable cause had they been present: that either party was known to the officer, that drug sales frequently took place in that parking lot, that the envelopes were characteristic of narcotics, or that either party acted furtively. Id. at 843.

While it is true Officer Johnson did not see what Sullivan had in his hand, the other facts and circumstances reasonably suggested to Officer Johnson that Sullivan had just committed a drug offense. Here, in addition to the officer's experience and the location of the transaction in an area known for narcotics activity, Officer Johnson observed Sullivan involved in three transactions that

appeared to be drug deals, two of which involved known drug users. And, it is not necessary for an officer to actually see the illegal substance to form probable cause, as long as there are other reliable indicia that a drug crime has occurred. See, e.g., State v. Fore, 56 Wn. App. 339, 345, 783 P.2d 626 (1989).

We conclude the trial court did not err in denying Sullivan's motion to suppress, because Sullivan's arrest was supported by probable cause.

II. Sufficiency of the Evidence

Sullivan also contends there was insufficient evidence to support his conviction for possession of a controlled substance with intent to deliver, because mere possession is not enough for a trier of fact to infer the required intent. Evidence is sufficient if, when viewed in the light most favorable to the State, any reasonable trier of fact could find guilt beyond a reasonable doubt. State v. Green, 94 Wn.2d 216, 221–22, 616 P.2d 628 (1980). When a criminal defendant challenges the sufficiency of the evidence, he admits the truth of the State's evidence, and all reasonable inferences therefrom are drawn in favor of the State. State v. Goodman, 150 Wn.2d 774, 781, 83 P.3d 410 (2004). Criminal intent may be inferred from conduct, and circumstantial evidence is as reliable as direct evidence. State v. Varga, 151 Wn.2d 179, 201, 86 P.3d 139 (2004).

Evidence of intent to deliver must go beyond mere possession. State v. Davis, 79 Wn. App. 591, 594, 904 P.2d 306 (1995). And, the evidence of intent "must be sufficiently compelling that the specific criminal intent of the accused may be inferred from the conduct where it is plainly indicated as a matter of

logical probability." Id. (internal quotation marks omitted) (quoting State v. Kovac, 50 Wn. App. 117, 119, 747 P.2d 484 (1987)). Further, evidence of other drug transactions in temporal proximity to the charged offense is relevant to prove intent to deliver. State v. Thomas, 68 Wn. App. 268, 273–74, 843 P.2d 540 (1992). Officer Johnson witnessed three different interactions that involved Sullivan; in one of them, Officer Johnson observed a woman purchase what the he believed to be drugs directly from Sullivan. Savare and Gauthari acted as lookouts. This evidence logically suggests Sullivan had the intent to deliver. Drawing all inferences in favor of the State, we conclude Sullivan's participation in the transactions was sufficient evidence of his intent to deliver the cocaine found on his person.

III. Sentence Enhancement for Delivery of Cocaine Within a School Zone

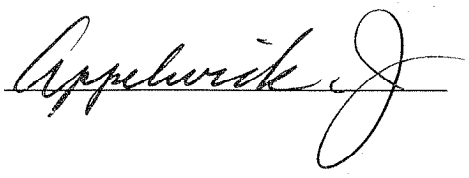
The State concedes it had insufficient evidence of Sullivan's alleged delivery of a controlled substance within a school zone. The jury instructions about the sentence enhancement directed the jury to consider whether Sullivan delivered a controlled substance to a person within one thousand feet of a school bus route stop, not whether he possessed a controlled substance with intent to deliver in a school zone. The State concedes it did not meet its burden to prove the delivery occurred. The only evidence it had was Officer Johnson's testimony that Sullivan had actually delivered a controlled substance, which the State characterizes as "conjecture, at best."

IV. Statement of Additional Grounds

In his statement of additional grounds, Sullivan argues the search of his

person was illegal under Arizona v. Gant, __U.S.__, 129 S. Ct. 1710, 173 L. Ed. 2d 485 (2009). Because the rules in Gant apply only to search of a vehicle incident to arrest and no vehicle was involved here, we decline to address his argument. His argument regarding probable cause was addressed by Sullivan's counsel and addressed above.

We affirm the conviction for possession of cocaine with intent to deliver, but we vacate the sentence enhancement for delivery of a controlled substance within a school zone and remand for correction of the judgment and sentence.



WE CONCUR: